

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

***Procedures Governing Loans Made Under
The Delaware Water Pollution Control Revolving Fund
for Hazardous Substance Release Sites***

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PURPOSE

SUBCHAPTER 1-2

I. PURPOSE

- A. The purpose of these Standards is to establish criteria for the making of loans from the Fund to provide financing for the remediation of properties contaminated from hazardous substance release. The Standards contain procedures governing the process for applying to the DNREC for assistance under the Fund, pre-closing and post-closing procedures and criteria for the DNREC's approval or disapproval of an application for assistance under the Fund.

DEFINITIONS

SUBCHAPTER 1-3

I. DEFINITIONS

- A. Unless otherwise indicated below, all capitalized terms used herein shall have the meaning ascribed to such terms in 29 Del. C. §8003(12)a.

The terms defined in Subchapter 1-1 of the Standards shall have the meanings ascribed to such terms therein.

The following words and terms, unless the context clearly indicates a different meaning, shall have the following respective meanings:

1. "Application" means an application made to the DNREC on such form or forms, together with all relevant attachments, as the DNREC may, in its sole discretion, require in connection with administration of the Fund.
2. "Applicant" means any person, including individuals, firms, partnerships, associations, societies, trusts, public or private corporations, not for profit corporations or other legal entities, including public or governmental bodies as well as natural persons for which a Project is undertaken or proposed to be undertaken.
3. "DNREC" shall have the meaning ascribed to such term in Subchapter 1-1 hereof.
4. "Loan" shall have the meaning ascribed to such term in Subchapter 2-1 hereof.
5. "Project" shall mean any activity which is to be used, occupied or undertaken by an Applicant which will tend to maintain or provide for pollution control in the State of Delaware.

6. "Recommendation" shall have the meaning ascribed to such term in Subchapter 1-8 hereof.

FEES

SUBCHAPTER 1-4

I. FEES

A. Application Fees

1. A non-refundable fee of two hundred fifty dollars (\$250) shall accompany every Application before such Application shall be considered by the DNREC. The fee shall be in the form of a check made payable to "The State of Delaware."

B. Closing Fees

1. For loans in any amount, a closing fee of one half percent (.5%) of the loaned amount shall be paid at closing.
2. Any fees or costs incurred in connection with closing a loan related to a Project, including, without limitation, attorney fees, shall be paid by the Applicant.
3. In no event shall the closing fee and the Application fee total less than five hundred dollars (\$500).

C. Post Closing Fees

1. Any fees or costs incurred by the DNREC in connection with executing a document or granting a consent or waiver related to a Project after closing, including, without limitation, attorney fees, shall be paid by the Applicant.
2. Any fees or costs incurred by the DNREC for modifying or restructuring payment terms for financial assistance after closing, shall be paid by the Applicant.
3. Closing documentation for all Projects shall contain the Applicant's covenant to pay the fees and costs described in paragraph C.1. and C.2. of this Subchapter 1-4.

D. Waiver of Fees

1. The foregoing fees shall, unless otherwise waived by the DNREC in its sole discretion, be paid with respect to all financial assistance granted by the DNREC.

LOAN TERMS

SUBCHAPTER 1-5

I. LOAN TERMS

A. Interest Rate

1. The interest rate on a Loan shall be no less than three percent (3%).

B. Maturity

1. A Loan shall not have a maturity the greater of any of the following:
 - a) one hundred twenty (120) months;
 - b) one hundred percent (100%) of the life of the project equipment after rehabilitation; or,
 - c) the remaining term of the project site lease if the borrower is a lessee and the Loan is not guaranteed by the lessor.

C. Repayment

1. A Loan will be amortized and repaid to the DNREC on a monthly basis. Any amortization of Loan repayment other than monthly principal and interest shall be at the sole discretion of the DNREC. Repayment of a Loan is to begin no later than fifty nine (59) days after closure.

APPLICATION PROCEDURE

SUBCHAPTER 1-6

I. APPLICATION PROCEDURE

- A. Before submitting an Application, the Applicant should consult with the DNREC to determine if the Project is eligible for consideration.
- B. To apply for financial assistance, an Applicant must submit a completed Application concerning the Project to the DNREC for review, together with the non-refundable

Application fee. No application will be reviewed by the DNREC until it is complete to the satisfaction of the DNREC.

- C. Applicants may obtain Application forms by contacting the Department of Natural Resources and Environmental Control, Division of Air & Waste Management, Site Investigation & Restoration Branch, 391 Lukens Drive, New Castle, DE 19720. Phone (302) 395-2600 Fax (302) 395-2601.
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EVALUATION PROCESS

SUBCHAPTER 1-7

I. EVALUATION PROCESS

- A. When an Application is complete to the satisfaction of the DNREC, the DNREC will evaluate the Project, which evaluation may be based on the following:
1. Visitation to the Applicant's site or place of business, which may take place prior to the Application as a part of the meeting to determine eligibility.
 2. Analysis of historical and projected financial statements and a comparison to industry peers, if applicable.
 3. An independent industry study (using source material such as RMA Annual Statement Studies), comparing the Applicant's projections to the study, and considering the short term and long term outlook for the industry, if applicable.
 4. Contact with the Applicant's customers to ascertain the quality of the product or service provided, the competitiveness of the pricing, reliability and timeliness of delivery, length of the relationship, likelihood of the relationship being continued, and customer's opinions of the Applicant's management.
 5. Contact with the Applicant's suppliers to ascertain the length of the relationship, the amount of credit extended, the amount of purchases, payment history, the likelihood of the relationship being continued, and possibly an opinion of Applicant's management.
 6. Contact with the Applicant's bank(s) to ascertain credit history and obtain an opinion of the Applicant's management.
 7. An analysis of collateral available to secure any requested financing as to adequacy of amount, quality, condition, and marketability.

8. Independent credit investigations of the Applicant and its principals, which may include judgment and lien searches.
 - B. After completing the evaluation, a determination shall be made regarding the merits of the request, the adequacy of the collateral available to secure the requested financing, if applicable, and, if applicable, the likelihood of repayment.
 - C. If a positive determination is made, the requested financing will be presented for preliminary approval.
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APPROVAL PROCESS

SUBCHAPTER 1-8

I. APPROVAL PROCESS

- A. The DNREC shall use its reasonable best efforts to complete its review of the Application and to forward the Application to the Loan Review Committee for approval or disapproval within sixty (60) days from the date it deems an Application complete.
- B. Upon review by the Loan Review Committee, the Loan Review Committee shall make a recommendation with respect to the Application (the "Recommendation").
- C. If the Loan Review Committee determines that a Project has substantial environmental impact, is in the public interest, and that the DNREC's financial support would represent a prudent use of the funds, then the Loan Review Committee may make a Recommendation for financial assistance for such Project which exceeds any limitations contained in these Regulations.
- D. The Recommendation of the Loan Review Committee shall constitute official action on the part of the DNREC demonstrating its intent to authorize the issuance of the requested financial assistance. The Recommendation will be binding on the DNREC provided, however, that the DNREC may withdraw a Recommendation at any time prior to the Closing Date if it determines that (1) the Applicant's circumstances have changed adversely since the date of the Recommendation or since completion of the Application if such adverse change did not come to the DNREC's attention prior to the Recommendation or (2) the Application contained a statement that was materially false or failed to include information necessary to prevent the Application from being materially false.
- E. The Recommendation will be effective for a period not to exceed one (1) year, and all funds committed for a Project must be completely dispersed by the DNREC within that time. The DNREC, in its sole discretion, may make limitations or grant extensions with respect to this one year period.

- F. The Applicant shall be issued a commitment letter outlining the terms and conditions of the Recommendation. When the commitment letter has been accepted by the Applicant and returned to the DNREC together with any required fees, and all required documentation is prepared in form and content satisfactory to the DNREC, a closing is scheduled and financial assistance is made available to the Applicant.

PROGRAM LOANS FOR HAZARDOUS SUBSTANCE RELEASE SITES

SUBCHAPTER 2-1

I. PROGRAM DESCRIPTION

- A. The DNREC is empowered to make direct loans to Applicants (a "Loan"). The maximum amount of a Loan shall be ninety percent (90%) of the total cost with respect to a Project. The DNREC may, in its sole discretion, limit the amount of its Loan in any Project to any amount less than ninety percent (90%).
- B. The maximum amount of a Loan shall be two hundred fifty thousand dollars (\$250,000) and the minimum amount shall be ten thousand dollars (\$10,000).
- C. Proceeds of a Loan can be used for Project costs directly related to improving, restoring or protecting groundwater, surface water or sediment quality.

II. ELIGIBILITY STANDARDS

- A. To be eligible for a Loan, a Project must be located in the State and should serve a public purpose by protecting groundwater supplies or surface water or sediment quality of the State through the remediation of hazardous substance release properties. Consideration shall be given to Applicants who are owners, lessees or prospective purchasers of facilities to be investigated and/or remedied and who have entered either the DNREC Voluntary Cleanup Program, or who have entered into a Settlement Agreement under enforcement action under the Hazardous Substance Cleanup Act ("HSCA") Program for the purpose of investigating and remediating hazardous substance release at a site. The Applicant must also be able to demonstrate to the satisfaction of the DNREC that financial assistance from the State will effectuate the outcome of the Project. Loan proceeds may be used for the following activities:
1. Maintenance and monitoring of contaminated Project sites;
 2. Costs associated with remediation of sites contaminated as a result of a hazardous substance release;
 3. Investigation and assessment of contaminated sites;
 4. Restoration or replacement of potable water supplies;
 5. Emergency response and initial site hazard mitigation; and,
 6. Costs relating to processing and closing the Loan Application such as credit reports, title reports, judgment and lien searches, and loan and appraisal fees.

7. Remediation of contaminated sites.

B. The following projects or costs do not qualify for a Loan:

1. Aesthetic improvements to the Project site;
2. Other attorney fees;
3. Environmental audits or pre-purchase agreements unless performed as part of a corrective action;
4. Demolition or repair of buildings;
5. Permanent relocation of residents;
6. Testing not directly related to corrective action;
7. Any third party work that is not in compliance with applicable State, Federal, and Local regulations and industry standards;
8. Third party litigation;
9. Administrative fines;
10. Projects located outside the State;
11. Refinancing of existing debt; and,
12. Projects which do not demonstrate protection of groundwater, surface water or sediment quality through the investigation and remediation of hazardous substance release at properties.

III. PROJECT APPROVAL STANDARDS

A. Findings. - As a precondition to approving a Loan, the DNREC shall make findings and determinations with respect to the Applicant and the Project. The DNREC shall apply the following standards, where applicable, in making such findings and determinations:

1. Environmental Standard. - The DNREC will review information concerning the Applicant as submitted in an Application or as otherwise available to the DNREC through independent investigation. As a condition precedent to making a Loan, the DNREC shall determine that the Applicant intends to maintain and/or is capable of maintaining the environmental remediation efforts effectuated by the approval and acceptance of the requested financial assistance. The Applicant must demonstrate proof of eligibility in compliance with Subsection 1.1 of the Delaware Regulations Governing Hazardous Substance Cleanup.
2. Capability Standard; Adherence to Law. In determining whether the Project will assist in protecting groundwater supplies and/or surface water or sediment quality of the State from contamination from hazardous substance release in the State, the Applicant shall demonstrate to the DNREC that the Applicant, operator or principal user thereof has the capability to operate and maintain such Project efficiently and that the Applicant has not been convicted of a violation involving moral turpitude. In this regard, the DNREC may, in its sole discretion, rely on a sworn affidavit of the Applicant or an officer of the Applicant or an opinion of counsel of the Applicant to such effect. If an Applicant has been convicted of such a violation, the DNREC, in its sole discretion, may decline to consider the Application. If requested by the DNREC, similar proof shall be obtained from any operator or principal user of the Project.

3. Prior Lending Commitment. - If applicable, prior to a Recommendation, the Applicant must provide a written commitment from a bank or other recognized lending institution evidencing its commitment to lend to the Applicant the required portion of the bank debt necessary to complete the proposed Project.
- B. Collateral Provisions. - The Loan shall be collateralized to the satisfaction of the DNREC which shall use standard underwriting procedures to determine such collateralization. In the case of a privately held company, personal guarantees from active owners (whose ownership is 20% or greater) will normally be required.
- C. Mandatory Provisions in Closing Documents. - The closing documents for a Loan shall state that, if applicable, the Applicant will provide evidence to the DNREC that the Applicant maintains property insurance policies on any collateral with the DNREC listed as loss payee, as its interests may appear.
- D. Post-Loan Period - Annual Reporting. - Unless waived or amended by the DNREC in its sole discretion, the Applicant shall, for a period of five (5) years following the funding of a Loan, submit to the DNREC, on an annual basis, financial statements in a form acceptable to the DNREC, and any other information required by the DNREC. Each Applicant shall report to the DNREC no later than August 31 of each of the years for which any information is required.

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